

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1426 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HARVEST FINANCIALS LTD.

Versus

VEEBIES UDYOG SERVICES THRO' PARTNERS VIPIN BIHARI SOHAL &2

Appearance:

MR YOGESH S LAKHANI for Petitioner
NANAVATI ASSOCIATES for Respondent No. 1
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/08/2000

ORAL JUDGEMENT

The petitioner herein is the original defendant
No.3, against whom and other defendants respondent No.1
herein has instituted a suit, being Special Civil Suit

No.26 of 1992 in the Court of Civil Judge (S.D.), Porbandar. In the said suit, the plaintiff had prayed for a decree of Rs.1,99,89,332.95, with interest against all the defendants of that suit. The plaintiff had also prayed for a declaration that the plaintiff, being the sole beneficiary under the Letters of Credit, is the only person entitled to receive the proceeds under the said Letter of Credit. The plaintiff had also prayed for permanent injunction against petitioner, the original defendant No.3, restraining it to pay and / or credit the proceeds due under the Letters of Credit in question to the defendant No.4. Prior to filing of the said suit, another Special Civil Suit No.24 of 1992 was filed by the respondent No.1 herein which is pending, and in the said suit, the respondent No.1 herein had applied for amendment of the plaint on various grounds. The respondent No.1, who is the original plaintiff of the suit in question, i.e. Special Civil Suit No.26 of 1992, and the respondent No.2 herein, who is the plaintiff in the earlier suit, being Special Civil Suit No.24 of 1992, belongs to the same group of Industries, i.e. Birla Group of Industries. In the aforesaid suit, on behalf of the plaintiff, an application below Exhibit 94 was given to permit him to withdraw the suit with a liberty to file fresh suit on the same cause of action by resorting to Order 23 Rule 1(3)(b) of CPC.

On behalf of the present petitioner, who was original defendant No.3 in the suit, the said application was resisted on various grounds. The learned Civil Judge (S.D.), Porbandar, however, by his order dated 15.6.1996, allowed the said application and the plaintiff was granted permission to withdraw the suit with a liberty to file fresh suit in respect of the said subject matter. The aforesaid order is impugned in the C.R.A. at the instance of original defendant No.3, Harvest Financials Ltd.

At the time of hearing of this revision application, it was argued on behalf of the petitioner that the plaintiff has got no absolute right to withdraw the suit unconditionally, with a liberty to file fresh suit on the same cause of action. It was submitted that it was not a case in which such permission could have been granted to the plaintiff. It was submitted that there was no formal defect in the suit and, therefore, there was no question of granting such permission. It was argued that in any case even if it is held that the permission to withdraw the suit with the liberty to file fresh suit was properly given, then also when the defendant has incurred the expenditure for fighting the

said suit, at least, no permission could have been granted without payment of costs to defendant No.3.

Against the aforesaid argument, it was argued by Mr.Nanavati for respondent No.1-original plaintiff that the order in question is a discretionary order and, therefore, this Court, while exercising revisional jurisdiction, should not interfere with the impugned order. It is submitted that award of costs is a discretion and, normally, therefore, court should not interfere with such discretionary order while exercising revisional power under Section 115 of CPC.

In view the reasoning given in the judgment in C.R.A. No.1424 of 1996, filed by original defendant No.4, dated 11th August, 2000, while confirming the order of the trial court in so far as the application of the plaintiff is concerned by which he has been given liberty to file fresh suit in respect of the same subject matter, I partly modify the order of the trial court to the effect that the said permission is granted, however, the plaintiff has to pay costs of suit to the defendant No.3. Accordingly, the order of the trial court in giving permission to file fresh suit to the plaintiff is upheld. However, the order of the trial court is modified to the extent of awarding costs to the original defendant No.3. The plaintiff is accordingly directed to pay costs of defendant No.3. This revision application is allowed to the aforesaid extent. Rule is partly made absolute to the aforesaid extent. However, so far as the revision application is concerned, there will be no order as to costs.

Revision application is partly allowed. Rule is partly made absolute.

(P.B. Majmudar, J.)

(apj)